

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9504 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHAVANABEN D/O BANSIBHAI LAXMANBHAI INDREKAR (CHHARA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9504 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 20/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226
of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 22nd of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 22nd of July, 2004 in pursuance of the above order.

2. The grounds the detention as placed on record reveal that the detaining authority took into consideration the fact of registration of two crimes against the petitioner under the Bombay Prohibition Act. One crime came be registered before Sardarnagar Police Station on 31st of October, 2003 and the second crime came to be registered before the Prohibition Police Station, Eastern Zone, on 20nd of July, 2004 whereby some foreign liquor was found in possession of the Petitioner. After going through the investigating papers, in said two crimes, entirely the detaining authority came to the conclusion that petitioner was bootlegging in storing selling and transporting the liquor knowing fully well that the consumption of the country liquor is injurious to the public health. On account of the above material placed before him, the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of the PASA Act and his antisocial activities were prejudicial to the maintenance of public order. The detaining authority reached to the subjective satisfaction that the illegal activities of the petitioner was required to be prevented forthwith. After considering other remedies available against the petitioner, the detaining authority passed order of detention under the PASA Act which is under challenged in this petition.

3. Learned Advocate Mr. M.R. Prajapati for the petitioner and learned AGP HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention, and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether the detaining authority applied mind properly to the material placed before him.

5. It is revealed from the grounds of detention that in the second offence registered against the petitioner,

the petitioner was in police custody on remand when the order of detention came to be passed against the petitioner. In this respect, the detaining authority came to the conclusion that on ending of police custody period, the petitioner would be produced before the court and was likely to move an application for bail. The detaining authority also concluded that on so moving bail application by the petitioner, he was likely to be released on bail and was likely to engage in bootlegging activities.

6. True it is that, the order of detention can be passed against the detainee while he is under custody, but in such case, the detaining authority must reach to the subjective satisfaction from the material available to him that the custody of the detainee was likely to come to an end and the detainee was likely to engage in illegal activities.

7. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of *AMRUTLAL vs. UNION OF INDIA*, as reported in AIR 2000 SC 3375, wherein the Apex Court observed that there must be cogent materials before the Officer passing the detention order that detainee was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detainee's moving an application for bail is not a cogent material and detention order based on such material was liable to be quashed.

8. In the present case, undoubtedly, the petitioner was in police custody on remand when order of detention came to be passed. Except papers of investigation in the crimes registered against the petitioner, and order of remand passed by the court in respect of the petitioner, there was no other cogent material before the detaining authority to infer that on production of the petitioner before the court, the petitioner was likely to move application for bail nor there was any material to infer that on moving such bail application, the petitioner was likely to be released on bail. Merely stating in the ground that the petitioner was likely to file application for bail and was likely to be released on bail is not sufficient to come to the conclusion that the custody of the petitioner would come to an end and he would indulge in illegal activities. The subjective satisfaction of the detaining authority in this respect especially in absence of cogent material, is not valid, legal and in accordance with law. The order under challenge,

therefore, is required to be set aside on this ground alone.

9. In the result the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 22nd of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Bhavanaben D/o Bansibhai Laxmanbhai Indrekar (Chhara) is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair